

## MEMO

**Submitted by:** Rose Jacobs Gibson, ABAG President  
San Mateo County Supervisor

**Subject:** Proposed Constitutional Convention

**Date:** November 5, 2009

### **Executive Summary**

At the November 19<sup>th</sup> ABAG Executive Board Meeting you are scheduled to hear from speakers representing two groups who are proposing significant reforms to the California Constitution. Both groups are motivated by the State's current fiscal crisis and massive unfunded liabilities extending into the future.

The State of California has not been in a net positive cash position since July, 2007, according to the State Controller. The State has engaged in aggressive internal and external borrowing to fund its current operations, which increases the structural budget deficit. The State ended last fiscal year with a deficit of \$11.9 billion. This year, the State's revenue receipts are down approximately 10% from last year (2008), and are running 5% less than estimated for the current fiscal year.

According to the Legislative Analyst's Office, projected annual shortfalls from 2010-11 through 2013-14 are consistently in the range of \$22 billion, about 20-25% of the entire budget. More worrisome are the State's longer term budgeting liabilities: Budget related liabilities are estimated at \$35 billion; infrastructure related liabilities at \$70 billion; and retirement related liabilities at \$100-\$135 billion.

One of the key issues constraining the ability of the Legislature and the Governor from resolving the State's critical financial condition is the existence of ballot box budgeting through the initiative process, which have both "locked in" spending while "locking out" revenues. Since 1988, four Propositions (99, 172, 10, 63) have locked up about \$5 billion annually of revenues for specific health care, early childhood, and public safety programs. Five Propositions (98, 42, 49, 1A, 1A) have locked in spending for education, transportation, and local government.

Another principal factor for the State's inability to resolve financial issues is the Constitution's requirement that a two thirds majority is needed in the Legislature to both pass a budget and raise taxes. There have been numerous attempts to change this Constitutional provision in prior elections, and all have failed. Recent polling has indicated that the electorate is still not prepared to repeal the two thirds voting requirement. In a State as demographically diverse as California, and in a hyper partisan political environment with voting districts approved by the Legislature to protect safe seats, it has been almost impossible to achieve super majority consensus in the Legislature on budget and tax and spending policies.

### **Two Approaches**

**California Forward** is a bipartisan group who is in the process of qualifying two initiatives that will further amend the Constitution. Their proposals are too complicated to analyze for their intended and perhaps unintended consequences in this staff report. The budget amendment is a reform of the budget process and imposes additional strictures on the Legislature. It will allow the budget to be passed with a majority vote, but retains the two thirds voting requirement for increasing taxes. The amendment prohibits the Legislature from adding new programs without demonstrating a revenue source (triggering the two thirds requirement if a tax) or a cut in some other program. The Legislature is also prohibited from converting a tax to a fee without a two thirds vote, which would constrain the Legislature from converting the gas tax to a legally imposed fee without a two thirds vote of the Legislature. The budget amendment also, among other things, includes provisions to provide more evaluative oversight of State programs, and limits the use of non-recurring revenues except for specific purposes.

**California Forward** is also proposing a Constitutional amendment to protect the proceeds of any tax, assessment or fee levied by a local agency from being borrowed, transferred, or appropriated by the State. In addition, Counties would be authorized

# ASSOCIATION OF BAY AREA GOVERNMENTS

Representing City and County Governments of the San Francisco Bay Area



to adopt ten year countywide strategic action plans, and could raise the sales tax by 1% to fund the plan if approved by a majority of voters. The Action Plan must meet numerous requirements, and shall contain plans submitted by each participating city and school district within the County.

***Repair California*** is a coalition group originally formed by the **Bay Area Council** that has filed two ballot measures calling for a limited state Constitutional Convention. The first measure amends the Constitution to allow a convention to be called by an initiative process, in addition to the current route to the convention that can be called by the Legislature. The second ballot measure outlines the rules and process for the convention to take place.

If approved by the voters and determined to be legal by the Supreme Court, the proposed convention will be populated by delegates chosen by three methods. Under this procedure, there will be three citizen delegates chosen from each of 240 Assembly Districts. These delegates will be chosen at random by jury pool procedures. The second set of delegates will be chosen by the County Board of Supervisors, with one delegate for each 175,000 residents of that County. Counties with less than 175,000 residents will get one delegate. The third set of delegates will be four Indian Tribe delegates.

The Convention will be limited in scope to four categories: Government Effectiveness; Elections and the Initiative Process; Spending and Budgeting; and Governance. The Convention may not propose direct tax or fee increases nor address social issues nor threaten protections on civil rights. The Convention will propose a package of proposals to be placed on the November 2012 general election.

The Convention will be staffed by the Constitutional Convention Commission, made up of the Fair Political Practices Commission. The delegates may also call upon other sources of information.

## **Recommended Action**

Executive Board Members may desire to further familiarize themselves with the proposals to determine whether the region should take a leadership role in advocating on behalf of the proposed Constitutional Amendment initiatives. ABAG staff will continue following these initiatives and will provide additional analysis as requested by the Board.

## **Attachments**



## THE *CALIFORNIA FORWARD* 2010 REFORM PLAN

California has always led the way, in jobs and technology, education and quality of life. We need comprehensive reform to get our state moving again so that California can lead again.

Politics as usual won't solve our problems. The California Forward Action Fund is a nonpartisan organization with no political ties or partisan agendas, and is led by citizens of every walk of life willing to put California first.

We've created a plan that puts community interests before special interests, protects funding for local services and provides a strong preference for government that's closer to the people. And our plan takes practices that have proven themselves in business and other states, and puts them to work in California, balancing the budget, reducing waste and delivering better results for people.

### **BEST PRACTICES BUDGET ACCOUNTABILITY ACT: A BUDGET THAT APPLIES LESSONS LEARNED**

Our plan calls for the state budget to set clear goals, design plans to achieve them, and take action when things go wrong. It's time to apply the best practices from successful businesses and other states to California's dysfunctional budget process, including:

- **Planning ahead on spending.** Requires the Governor and lawmakers to think long-term about spending priorities and revenues by reviewing a two-year spending plan along with a five-year fiscal forecast before approving the annual budget. The measure also strengthens requirements for quick action when the budget is out of balance.
- **Results and accountability.** Requires clear goals for every program to be spelled out in the Governor's budget and improves the legislative process for developing the budget by focusing on results and greater public transparency.
- **Performance review.** Requires the Legislature to oversee major expenditures and examine every program at least once every 10 years, looking for ways to improve efficiency and reduce waste.
- **Reduce debt when revenues spike.** Creates a process for identifying and using occasional, nonrecurring spikes in revenue for one-time uses, such as paying down debt.
- **Pay-as-you-go.** Requires that major new or expanded programs and tax reductions proposed in the budget or legislation identify a specific funding source such as savings, cuts to other programs or tax increases.
- **Majority vote budget.** As part of these comprehensive fiscal reforms, lowers the vote requirement for adopting the state budget to a majority vote of the Legislature. All

lawmakers would forfeit their pay and per diem when the budget is late. The measure also requires a two-thirds vote for any new fees that replace tax revenue, but does not change the majority vote requirement for other fees or the two-thirds vote requirement to raise taxes.

## **COMMUNITY FUNDING PROTECTION AND ACCOUNTABILITY ACT: GOVERNMENT CLOSER TO THE PEOPLE**

We need to protect locally levied taxes that pay for schools, police, fire and other basic services from being borrowed or redirected by state government.

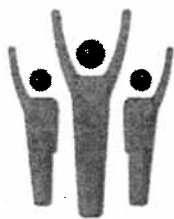
Counties, cities and schools also need the tools to address community needs by working together. Our plan encourages communities to coordinate to solve problems without all the duplication, waste and red tape of Sacramento. It allows cities, counties and schools to work together to address community needs – and lets voters decide whether to support them by majority vote – while retaining protections established under Prop. 218.

- **Protecting Local Tax Dollars.** The proceeds of any tax, assessment or fee levied by a local agency (including a county, city, a school district, or any other local or regional governmental entity) belong exclusively to that entity. The state would be prohibited from borrowing, transferring or making any appropriation of those funds, including Prop. 42 transportation funds.
- **Encouraging Community Problem-Solving.** Local governments would be allowed to develop and implement countywide action plans to ensure that officials are working together to address local priorities, eliminate waste and duplication, and identify how additional revenue would be used to reach community goals.
- **New resources for community services.** If a countywide action plan is adopted requiring additional revenue, county supervisors may ask voters to approve an increase in the sales and use tax of up to 1 cent. If approved by a majority of voters, an amount equal to the new revenue will be distributed among local governments.
- **Public accountability for results.** Local officials would have discretion about how to spend new dollars, but also be held accountable for reporting progress toward community goals, and be required to seek voter approval to continue carrying out the plan at least once every 10 years.



# REPAIR CALIFORNIA

*California's State Constitutional Convention*



## The Movement to Repair California

*Our Government has failed us.* This was the headline of the August 2008 opinion editorial, authored by Jim Wunderman, President & CEO of the Bay Area Council, which ignited the movement to Repair California through a limited Constitutional Convention.

California, was once was the envy of the nation with the country's best schools, infrastructure system and a thriving economy. Today our schools are the worst in nation, our state has the two most congested regions in the country, our unemployment rate is higher than the national average and California is consistently ranked the worst state to do business. Our legislature has failed to pass a budget on time 21 times in the past 30 years, each day of the delays costing the taxpayers tens of millions of dollars. Special interests have hijacked the initiative system, passing misleading initiatives that benefit the few through expensive campaigns.

We believe that our state will continue to careen from one crisis to the next until we fix the system.

The *only* way to achieve this - the only way to make sweeping, hollistic changes to our state government and wrestle our state back from special interests - is through a limited constitutional convention. While some may be fearful of Californians fixing our state through a Convention, we believe that there is nothing more scary than the status quo.

Thousands of Californians have joined the movement to fix our state. We hope you will join us.

## Los Angeles Times

"It's time to end the circus and start fresh, with a new constitution by and for the people who use it and live with it. The Los Angeles Times thus enthusiastically endorses a state constitutional convention as the best opportunity for California to reclaim its stability and purpose."

## THE ORANGE COUNTY REGISTER

"Many top Republicans and Democrats agree on how to fix government in California – a state plagued by perennial budget crises, dwindling services, failing schools, crumbling infrastructure, and inordinate influence from special interests. The solution? Rewrite the state constitution."

## The San Diego Union-Tribune.

"What [community leaders] want is a state government that actually functions and a Legislature that can pass a budget on time, without being hamstrung by ideological tugs of war or unworkable strictures on taxes and spending. No matter what end of the political spectrum you come from, that sounds like a good idea – which is why the constitutional convention initiative has been drawing backers statewide."

## The Economist

"As California ceases to function like a sensible state, a new constitution looks both necessary and likely."

## THE SACRAMENTO BEE

"The Constitutional Convention may be California's only hope." - Dan Walters, Columnist (Considered the "Dean of the Capitol Press Corp.")



[www.repaircalifornia.org](http://www.repaircalifornia.org)

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## Constitutional Convention Ballot Measures Fact Sheet

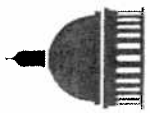
- Repair California filed two ballot measures on October 28, 2009, to call for a limited state Constitutional Convention. They are currently awaiting title and summary from the Attorney General.
- The first ballot measure, the *Citizens' Constitutional Convention Act*, amends Article 18, Section 2 of the California Constitution to allow the citizens of California to call for a Constitutional Convention by the vote of simple majority in a state-wide election ballot.
  - It specifies that a Call for a Convention can be made through the initiative process, so long as no convention has convened within ten years of such an election.
  - It stipulates that whether a Convention is called through the Legislature (the current route to a Convention) or through the initiative process (the new route to a Convention), the Convention call may prescribe judicially enforceable limits (a limited scope), it authorizes the Convention to propose both a revision or separate amendments to the Constitution and finally, it allows the call to outline a fair methods for selecting or electing delegates.
- The second ballot measure, *The Call for a Citizens' Limited Constitutional Convention*, would call for the Convention and set forth the following rules and principals:
  - Forms the Constitutional Convention Commission, made up of the Fair Political Practices Commission or their designees, which will: Incur all costs of the Convention; determine the date and location of the Convention; hire the Constitutional Convention Clerk and other staff and counsel; be the final arbiter of delegate qualification; provide for the training of delegates; determine if required deadlines should be extended; and, provide any additional assistance as determined by the Convention.
  - Outlines the duties of the Constitutional Convention Clerk who will: Prepare and manage the Convention budget; establish Convention rules for adoption; serve as interim-Chair for Convention until the delegates elect a Chair; hires staff and provides analysis for the delegates' deliberation (provided that the delegates may also call upon the state's Legislative Analyst or other sources of information); establish and maintain Convention website; and, oversee the administration of Convention and other duties determined by the Commission or the Convention.



- Describes the three different types of delegates to be selected: Assembly District delegates, County delegates and Indian Tribe delegates.
  - There will be 240 Assembly District delegates, three from each district.
  - There will be one County delegate for each 175,000 residents of that County. If a County has less than 175,000 residents, it will have one delegate.
  - There will be four Indian Tribe delegates, serving as representatives of the federally recognized Indian Tribes in the State.
- Outlines the process by which each type of delegate is selected. (see Delegate Selection paper)
- Limits the scope of the Convention to the following four categories:
  - Government Effectiveness, with emphasis on establishing a method for ensuring government efficiency.
  - Elections and the Initiative Process, with a focus on reducing special interest influence.
  - Spending and Budgeting, relating to the process, term and balancing of the budget, voting thresholds and mandating spending.
  - Governance, including the relationship between the state and local governments and the structure of the legislative and executive branches.
- Further limits the scope of the Convention by dictating that the Convention may not propose direct tax or fee increases nor shall it address social issues or other issues related to increasing taxes and changes that could threaten protections on civil rights.
- Requires the Convention commence no later than May 20, 2011 and the delegate's package of proposals will be voted upon no later than at the November 2012 general election.
- Outlines quorum, voting rules and order of business responsibilities.
- Ensures that all proceedings of the Convention are free and open to the public and sets forth rules to ensure openness and transparency.
- Note: The parameters governing the proposed Convention set forth in this initiative and inserted as statutory government code will expire on December 31, 2012, unless otherwise extended by the Legislature.

**Repair California:** We are a broad-based coalition of Californians dedicated to achieving real reforms that are needed to get California functioning again.





# Routes to become a Delegate to the California Constitutional Convention



## How it works...



Each California County will have one delegate for every 175,000 residents. If a County has a population of less than 175,000, they will have one delegate. Recent population estimates show that there would be 221 County Delegates.



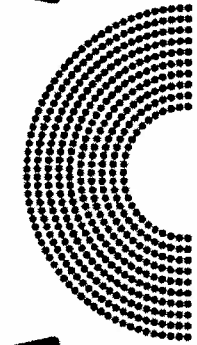
In each County there will be a Delegate Selection Committee made up of five people: Two members of the Board of Supervisors, two mayors and a school board or board of education member.



The County Delegate Selection Committee of each County will hold public meetings to select, by majority vote, County delegates to the convention. Any person interested can and should apply.



The three cities that have a population of over one million (Los Angeles, San Diego & San Jose) will have their share of delegates chosen at the city level by the members of the City Council, under the same process the County Delegate Selection Committee. In addition, the four federally recognized Indian Tribes will also appoint their own delegates.

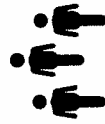


California Constitutional Convention

## Assembly District Delegates



## How it works...



Each California Assembly District will have three delegates. In total, there will be 240 Assembly District Delegates.



The State Auditor randomly selects the names of 400 people in each Assembly District across California.



Those 400 people, per district, will receive information by mail about becoming a delegate. If they are interested in serving, they respond to the Auditor.



Of those who responded favorably, 50 individuals per assembly district will be invited to attend a presentation to learn more about duties and responsibilities of a delegate. At the meeting of 50, following discussion and deliberation, they will vote for three in their own ranks to represent the Assembly District as delegates to the Constitutional Convention.



A RESOLUTION OF THE BOARD OF SUPERVISORS  
SUPPORTING REPAIR CALIFORNIA'S DUAL BALLOT MEASURES  
CONVENING A LIMITED STATE CONSTITUTIONAL CONVENTION

WHEREAS, Repair California, a non-partisan, statewide coalition of individuals and organizations, which advocates for convening a limited Constitutional Convention to repair California's governance; and

WHEREAS, Repair California is submitting two ballot measures which will constitute the first systematic reform of the guiding document of our great state since 1879; and

WHEREAS, the first ballot measure will amend the state constitution to allow for the electorate to call a constitutional convention; and

WHEREAS, the second measure will call and convene a limited state constitutional convention focused on issues of governance; and

WHEREAS, the judicially-enforceable, limited Constitutional Convention will focus solely on issues of governance, defined as elections, the budget process, revenue distribution, and restoring the balance of power between the state and local governments; and

WHEREAS, direct tax or fee increases will be explicitly barred from consideration, as will social issues such as marriage, guns, abortion, and prayer-in-school, allowing the Convention to focus on critical governance reforms; and

WHEREAS, amended more than 500 times, the Constitution of the state of California is currently the third largest such document in the world, behind those only of Alabama and India, at over 75,000 words; and

WHEREAS, the Constitution has been described as "the perfect example of what a constitution ought *not* to be" [Wilson and Ebbert, California's Legislature]; and

WHEREAS, the lack of a functioning system of state governance – a system dictated by the Constitution – is a major factor in the legislative and budgetary gridlock affecting the government of our state; and

WHEREAS, the legislative and budgetary gridlock in our state greatly harms the ability of local governments to properly and effectively budget, finance and govern for the needs of the people; and

WHEREAS, the legislative and budgetary gridlock in our state and unfunded mandates dictated by the state's Constitution results in damaging borrowing or taking of funding from local government; and

WHEREAS, the legislative and budgetary gridlock in our state prevents needed action in policy areas beset by crisis, such as education, water, transportation, prisons, and the relationship between the state and local government; and

WHEREAS, some important measures in consideration for the November 2010 ballot would lock-in existing local funding in a broken system, but a Constitutional Convention could fix the system and restore the balance of power between the state and local government; and

WHEREAS, Sacramento has proven unable to reform itself, and hence local government and the people of the great state of California must bring reform to Sacramento;

NOW THEREFORE BE IT RESOLVED, that by adoption of this Resolution, the County Board of Supervisors hereby supports Repair California's call for a limited State Constitutional Convention.